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Nos. 83-1321, 83-1432, 83-1433, 83-1442,
83-1443 and 83-1618

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

THE PEOPLE OF THE STATE OF CALIFORNIA, *et al.*,
Petitioners

v.

TENNECO OIL COMPANY, *et al.*,
Respondents

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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SUPPLEMENTAL MEMORANDUM OF RESPONDENTS, WILLIAM G. WEBB, *ET AL.*

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June 13, 1984

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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William G. Webb, *et al.* ("Webb parties"),[1] respondents herein, file this supplemental memorandum pursuant to the notice of the Clerk of this Court, dated

[1] This supplemental memorandum is filed on behalf of the respondents specifically enumerated at page 1, fn. 1, of the Brief of Respondents, William G. Webb, *et al.* in Opposition, filed May 11, 1984. It should be understood that throughout the course of these proceedings the Webb parties do not waive and specifically reserve their rights under the doctrines of collateral estoppel and *res judicata* which they raised below, but which the Court below did not address. 708 F.2d 1011 at 1020 (App. 1a at 19a).

May 31, 1984. By said notice, counsel were invited to address the offer of settlement and joint request for approval of stipulation of the settlement and agreement that was filed with the Federal Energy Regulatory Commission ("Commission") on May 18, 1984, as said settlement or other agreed upon settlements bear on the pending petitions for writs of certiorari.[2] The Webb parties submit that the settlement agreements already executed between various parties in these proceedings further demonstrate that this case is not one which warrants an affirmative exercise of this Court's extraordinary and discretionary certiorari jurisdiction.

As the Webb parties pointed out in their Brief in Opposition, p. 4:

> Thus, as a result of Congress' passage of the NGPA,[3] this case stands alone and has no precedential effect as to new lease-sale transactions because such new transactions are by law now exempt from the NGA.[4]

No party in any of the reply briefs that have been submitted has challenged the conclusion that the NGPA has limited this case to its facts. In fact, as the Government states in its Reply Memorandum for the Petitioner, p. 5:

> —we submit that the future ramifications of this *one case alone* are themselves sufficiently substantial to warrant certiorari. (emphasis added).

Assuming *arguendo* the "fall back" position of the petitioners to be correct that the facts of this single case

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[2] On May 30, 1984, Petitioner, El Paso Natural Gas Company ("El Paso") and Respondents, Tenneco Oil Company ("Tenneco") and Conoco Inc. ("Conoco") filed a joint suppleemntal brief advising this Court that a comprehensive settlement agreement had been entered into between El Paso and Tenneco and Conoco, which was being filed with the Federal Energy Regulatory Commission on May 18, 1984.

[3] Natural Gas Policy Act of 1978, 15 U.S.C. § 3301, *et seq.*

[4] Natural Gas Act of 1938, 15 U.S.C. § 717, *et seq.*

alone justify certiorari, the settlement agreements would severely restrict the area left to be adjudicated. Thus, the issue which the petitioners seek to present on certiorari is no longer a "live one," either in the context of a pervasive precedent or in the context of the facts of this case, itself.

This case involves lease sales to Northwest Pipeline Corporation ("Northwest") and El Paso Natural Gas Company ("El Paso"). Lease sales to Northwest are designated as "PLA's," and those to El Paso as "GLA's." The Commission by order of November 23, 1983, 25 FERC ¶ 61,292, has already approved a settlement involving PLA-5 between Northwest and Phillips Petroleum Company. PLA-5 is the largest of the PLA's covering approximately 202,000 acres of land in the San Juan Basin. 25 FERC at 61,672. The Commission by order issued March 30, 1984, 26 FERC ¶ 61,421 also approved a settlement involving PLA-3 between Northwest and Getty Oil Company. El Paso has entered into a settlement agreement with Union Oil Company of California dated November 11, 1983, and filed with the Commission on December 13, 1983, involving GLA's 76, 348 and 349. The latest GLA settlement agreement to surface is that about which this Court was recently apprised. Such agreement is between El Paso and Tenneco-Conoco and involves GLA's 47, 52, 60 and 78. These four GLA's represent nearly seventy percent of the El Paso volumes that are involved here. Although the two El Paso settlement agreements have not been as yet approved by the Commission, the fact remains that there is comparatively little acreage and gas remaining outside of that involved in the settlement agreements. In other words, there is little left that a decision of this Court, even if certiorari were granted, can affect.

For the foregoing reasons and those stated in our brief in opposition, the petitions for a writ of certiorari should be denied.

Respectfully submitted,

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